

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
City of Industry, CA, Employer**

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**Docket No. 15-0841
Issued: August 3, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 4, 2015 appellant, through counsel, filed a timely appeal of a February 6, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he was totally disabled March 30, 2013 through February 5, 2014 due to his accepted employment injuries.

On appeal counsel argues that OWCP failed to consider the September 25, 2013 report of Dr. Eamonn Mahoney, a Board-certified orthopedic surgeon.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 24, 2013 appellant, then a 61-year-old mail handler, filed three separate occupational disease claims alleging that he developed bilateral carpal tunnel syndrome, cervical disc disease with radiculopathy, and lumbar disc disease with polyneuropathy and radiculopathy due to factors of his federal employment. He indicated that he first became aware of his conditions on January 17, 2013 and first related these conditions to his employment on March 1, 2013. Appellant attributed his occupational diseases to his duties as an equipment operator or mule driver for 25 years. This position required him to drive a vehicle with small wheels on an uneven cobblestone floor surface. Appellant alleged that his body constantly bounced up and down, jolting him. He noted that the steering was controlled with handlebars and his arms were always straight and forward. Appellant drove while standing. He attributed his diagnosed conditions to this driving activity and resulting vibrations.

Appellant stated that he developed severe pain in his legs and feet in December 2012. He stated that his feet became completely numb and that he used a walker to assist in ambulation. Appellant reported that he lost his balance and fell several times. On March 22, 2013 he fell entering the bathroom at his home and fractured his back.

The employing establishment stated that appellant had filed a previous occupational disease claim and had stopped work on July 3, 2011. Appellant returned to work on January 30, 2012 and on February 13, 2012 accepted a limited-duty position as a security guard. He continued to work in this position until March 23, 2013 when he notified the employing establishment that he had fallen at home and was unable to report for duty. Appellant used 60 days of leave intermittently from February 13, 2012 to March 23, 2013.

Dr. Mahoney examined appellant on March 29 and April 15, 2013 and diagnosed closed lumbar vertebra fracture. On May 23, 2013 Dr. Kenneth K. Wogensen, a Board-certified neurologist, found that appellant was totally disabled through July 5, 2013.

Dr. Wogensen examined appellant on August 8, 2013 and diagnosed carpal tunnel syndrome, cervical disc disease with cervical radiculopathy, and lumbar disc disease with lumbar radiculopathy as well as polyneuropathy. He noted appellant's employment duties of driving a mule over a cobblestone floor with his arms extended resulting in continuous bouncing. Dr. Wogensen opined that the constant bouncing affected appellant's neck and low back. He stated, "[Appellant] had a ripple effect due to the fact that his wheels were only four inches in diameter. This caused wear and tear on the nerve in his legs and the discs in his neck and low back."

In a note dated September 25, 2013, Dr. Mahoney found that appellant experienced a compression fracture on March 22, 2013. He stated, "The fall could have been a result of [appellant's] diagnosed neuropathy in his legs and feet. He does not have good sensation in his legs and feet and the fall occurred while walking from the bed to the bathroom. It is definitely conceivable that the neuropathy was a cause for his fall that resulted in the compression fractures of L1 and L2...." Dr. Wogensen found that appellant should not work from December 31, 2013 through April 1, 2014.

In a letter dated December 6, 2013, OWCP requested additional factual information from appellant. Specifically, it asked that he provide a statement describing his March 22, 2013 fall, what body parts were affected and how the injury prevented him from working. Appellant completed a statement on January 2, 2014 and reported that on March 22, 2013 his legs collapsed while walking from his bedroom to the bathroom at home. He fell on his back. Appellant sustained compression fractures of L1 and L2, which were treated with kyphoplasty. He stated that he had been diagnosed with neuropathy prior to his fall. Appellant alleged that his fall had worsened his neuropathy.

Dr. Wogensen completed a report on January 16, 2014 and opined that appellant was totally disabled beginning March 22, 2013 due to his fall at home and the resulting compression fractures of his spine. He noted that prior to the March 22, 2013 fall appellant had weakness and numbness in both his upper and lower extremities. Dr. Wogensen attributed this condition to repetitive trauma. He described appellant's employment duty of driving a mule over a cobblestone floor with continuous bouncing. Dr. Wogensen stated, "I believe that the work-related injuries to the C6 and L5 nerve roots contributed to [appellant's] fall at home in March 2013."

On January 30, 2014 OWCP accepted appellant's claim for cervical degenerative disc disease C6, lumbar degenerative disc disease, brachial neuritis or radiculitis, thoracic or lumbosacral neuritis or radiculitis, and bilateral carpal tunnel syndrome.

Appellant filed a Form CA-7a claim for compensation requesting compensation for leave without pay, loss of night differential, and Sunday premium pay beginning March 30, 2013 through February 5, 2014. In a letter dated February 24, 2014, OWCP requested additional medical evidence supporting his claim for total disability beginning March 30, 2013.

Dr. Wogensen completed reports on February 4 and March 10, 2014 diagnosing C6 radiculopathy and L5 radiculopathy, persistent carpal tunnel syndrome and cubital tunnel syndrome. He repeated appellant's implicated employment activities and opined that appellant was totally disabled due to his neck and back injuries. Dr. Wogensen noted that appellant had been disabled since March 22, 2013 following his fall at home which resulted in compression fractures of the lumbar spine. He repeated his earlier statement that appellant's work-related C6 and L5 nerve root injuries contributed to his fall at home in March 2013.

OWCP denied appellant's claim for compensation by decision dated April 3, 2014. It found that there was no medical evidence supporting his total disability for the period claimed due to his accepted conditions. Counsel requested an oral hearing from OWCP's Branch of Hearings and Review on April 14, 2014.

Dr. Wogensen completed reports on April 24 and May 9, 2014 and stated that appellant could not return to his date-of-injury position, but could return to light-duty work. He described appellant's employment duties and stated:

"Once again, I believe that [appellant's] pain and discomfort is a ripple effect due to the fact that the wheels were only four inches in diameter. This caused wear

and tear in the nerves in his back and neck affecting the upper and lower extremities.

“I believe that [appellant’s] work-related injuries caused weakness in both the cervical and thoracic spine that led to contribute to his fall, which occurred in March 2013 at home.”

On June 5 and 19, 2014 as well as July 28, 2014 Dr. Wogensen repeated his earlier statements and added that appellant’s job responsibilities weakened his cervical and lumbar spine leading to the fall. He completed a report on September 5, 2014 and found that appellant was incapable of working as a security guard as he could not sit for more than five minutes. Dr. Wogensen opined that appellant was totally disabled due to exacerbations of his back and neck pain. He repeated these findings on October 2, 2014. In a report dated November 6, 2014, Dr. Wogensen found that appellant was permanently disabled and unable to return to work due to his diagnosed conditions.

Appellant testified at the oral hearing before an OWCP hearing representative on November 13, 2014. He noted that he first became aware of his occupational diseases on January 17, 2013, but did not stop work until the end of March due to unbearable pain, insomnia, cramps in his legs, and his inability to drive. Appellant noted his compression fractures on March 22, 2013. He indicated that he stopped work after this fall. Appellant stated that the spine compression fractures pressed on his nerves and caused cramping in his legs. He also stated that he was unable to drive distances or on the freeway.

Dr. Wogensen completed reports on November 11 and 26, 2014 as well as January 12, 2015 and stated that appellant had numbness and tingling in the lower extremities. He noted that appellant recently sustained third degree burns on his feet because he did not realize that there was hot charcoal on the ground due to the lack of sensation in his legs and feet. Dr. Wogensen stated that the constant bouncing from driving the mule over cobblestones affected his cervical, thoracic, and lumbar spine as well as his hands and arms. He opined that repetitive movements resulted in the cervical and lumbar radiculopathies as well as peripheral nerve injuries. Dr. Wogensen added the condition of polyneuropathy to appellant’s list of diagnoses.

By decision dated February 6, 2015, OWCP hearing representative affirmed the April 3, 2014 decision of OWCP. She found that OWCP had not accepted appellant’s claim for bilateral foot neuropathy. The hearing representative also noted that he had not worked from July 3, 2011 through January 30, 2012 and returned to working light duty from January 30, 2012 through March 2013. She found that the medical records regarding whether appellant’s fall at home was related to his work-related spinal condition were “purely speculative.” The hearing representative concluded, “It is clear [that appellant] was working prior to his fall at home and his present disability is a result of the personal fall and not related to his postal employment.”

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁴

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁵ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁶ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁷

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Larson in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.⁸

A claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete

² U.S.C. §§ 8101-8193.

³ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁵ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁶ *Id.*

⁷ *Id.*

⁸ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

factual and medical background, showing causal relationship. Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that this case is not in posture for a decision with regard to appellant's claim for compensation for March 30, 2013 through February 5, 2014 as OWCP did not appropriately develop appellant's consequential injury claim. Appellant filed several claims for occupational disease which OWCP accepted on January 30, 2014 for cervical degenerative disc disease C6, lumbar degenerative disc disease, brachial neuritis or radiculitis, thoracic or lumbosacral neuritis or radiculitis, and bilateral carpal tunnel syndrome. He submitted factual and medical evidence to support his allegation that his additional conditions of compression fractures of L1 and L2, sustained as the result of a fall at home on March 22, 2013, were the consequence of his accepted conditions. The Board finds that OWCP did not properly develop appellant's consequential injury claim and cannot adjudicate his entitlement to disability for the period claimed without properly developing this aspect of appellant's claim.¹²

Appellant completed a statement on January 2, 2014 in response to OWCP's only inquiry regarding his alleged consequential injury dated December 6, 2013 and reported that on March 22, 2013 his legs collapsed while walking from his bedroom to the bathroom at home. He fell on his back.

Appellant submitted limited medical evidence addressing this consequential injury. Dr. Mahoney examined appellant on March 29 and April 15, 2013 and diagnosed closed lumbar vertebra fracture. On September 25, 2013 Dr. Mahoney diagnosed compression fractures on March 22, 2013. He stated, "The fall could have been a result of [appellant's] diagnosed neuropathy in his legs and feet. He does not have good sensation in his legs and feet and the fall occurred while walking from the bed to the bathroom. It is definitely conceivable that the neuropathy was a cause for [appellant's] fall that resulted in the compression fractures of L1 and L2...." This report supports that appellant sustained compression fractures as a result of the

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *S.N.*, Docket No. 13-1209 (issued August 1, 2014).

March 22, 2013 fall and offers some support for Dr. Mahoney's opinion that the fall was attributable to appellant's preexisting lumbar condition.

On January 16, February 4, and March 10 2014 Dr. Wogensen stated that appellant was totally disabled beginning March 22, 2013 due to his fall at home and the resulting compression fractures of his spine. He noted that prior to the March 22, 2013 fall appellant had weakness and numbness in both his upper and lower extremities which he attributed to his employment duty of driving a mule over a cobblestone floor with continuous bouncing. Dr. Wogensen stated: "I believe that the work-related injuries to the C6 and L5 nerve roots contributed to [appellant's] fall at home in March 2013." He also stated: "I believe that [appellant's] work-related injuries caused weakness in both the cervical and thoracic spine that led to contribute to his fall, which occurred in March 2013 at home."

The Board finds that these reports support a causal relationship between appellant's alleged consequential injury and his accepted conditions of cervical degenerative disc disease C6 and lumbar degenerative disc disease and radiculitis. Dr. Wogensen indicated that appellant's work-related weakness contributed to his fall on March 22, 2013 resulting in the diagnosed condition of compression fracture. These reports from Dr. Wogensen contain a history of injury, diagnosis, and an opinion that appellant's fall with the resulting compression fractures was caused or contributed to by his accepted employment injuries. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between his accepted employment injuries and a consequential fall and resulting injury and are sufficient to require OWCP to undertake further development of his claim.¹³ The Board further notes that OWCP procedures provide specific steps including requesting medical evidence from the claimant which was not followed in this case.¹⁴ OWCP did not initially request medical evidence regarding appellant's alleged consequential injury of compression fractures and did not inform him of the deficits in the medical and factual evidence regarding his claim for a consequential injury.¹⁵

OWCP denied appellant's claim for disability as he had not established that the period of disability claim was due to his accepted employment injuries. It did not address the consequential aspect of his claim. The case will be remanded for further adjudication of appellant's claim for a consequential injury. Following such further development of the medical evidence as OWCP deems necessary, it should issue *de novo* decisions on both his consequential injury claim and his claim for compensation.¹⁶

¹³ C.V., Docket No. 14-1940 (issued May 26, 2015); C.B., Docket No. 13-1091 (issued September 16, 2013); W.B., Docket No. 12-1896 (issued March 26, 2013); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.7 (January 2013).

¹⁵ 20 C.F.R. § 10.121.

¹⁶ *Supra* note 12.

CONCLUSION

The Board finds that this case is not in posture for decision as to appellant's entitlement to compensation from March 30, 2013 through February 5, 2014.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for proceedings consistent with this decision of the Board.

Issued: August 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board